COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[CHAPTER VIII, RULE 32(2)(b)]

Description of the case

Criminal Appeal No. 172 of 2002 decided on 13th May 2005

Bhagwan Singh and others

Versus

State of Uttaranchal.

A.F.R. (Approved for reporting)
~~Not approved for reporting.~~

(Hon'ble Mr. Justice Irshad Hussain)

(Hon'ble Mr. Justice Rajesh Tandon)

Date 13-05-2005

In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 172 of 2002.

1- Bhagwan is S/o Fatey Singh,

2- Deepak Singh S/o Fatey Singh,

Both residents of Village Mathaya
Gaon Bhardar, Police Station Rudraprayag,
District Rudraprayag ….. Appellants.

Versus

State of Uttaranchal … Respondent.

Sri R.S. Sammal, learned counsel for the appellants.

Sri D.K. Sharma, learned G.A.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble Rajesh Tandon, J.

Dated: 13th May, 2005

(Per: Hon'ble Irshad Hussain, J.):

Appellants Deepak Singh and Bhagwan Singh, who are real brothers, were arrested on 6-2-2002 in F.I.R. case crime No. 24/2002 under Sections 344/302 I.P.C. of P.S. Rudraprayag, District Rudraprayag, registered on 3-2-2002. On being charge sheeted under Sections 344/302 I.P.C., after investigation, they were committed to court of Sessions and faced trial under sessions trial No. 12/2002. They were acquitted of the charge under Section 344 I.P.C, but were held guilty, convicted and sentenced to undergo imprisonment for life under Section 302 I.P.C. for committing the murder of Smt. Budhi Devi, the wife of one of the appellant Deepak Singh, per judgment and order dated 17-6-2002, passed by the then District and Sessions Judge, Rudraprayag.

2- Smt. Budhi Devi was married to appellant Deepak Singh about five years before the incident. This appellant used to stay in Delhi for and in connection with his employment. His wife Smt. Budhi Devi however used to reside in her marital home in village Mathaya Gaon Bhardar, P.S. Rudraprayag, where the other three brothers of her husband including the appellant Bhagwan Singh were also residing with their family members.

3- According to the prosecution, about twenty days before 30-1-2002, Smt. Budhi Devi gave a birth to a child. Her husband appellant

Deepak Singh has however been in Delhi for the last more than one year and the child born was known to be illegitimate. Appellant Bhagwan Singh, the brother-in-law of the said lady appear to have established illicit relations with her and in resulted in the lady getting pregnant and gave birth to a child. Smt. Budhi Devi made it public that the child born was the result of the illicit relations maintained with her by appellant Bhagwan Singh, resulting which both the appellants and other relations got displeased and started entertaining grudge against her. The appellants to give vent to their wrath even started beating Smt. Budhi Devi and few days after the delivery of the child poured kerosene oil on her person and set her ablaze. She sustained burn injuries and despite this she continued to be detained inside the house and was not shifted to give her medical treatment with a view that she may ultimately succumb to her burn injuries.

4- It was also the prosecution case that some how Gaurav Singh (P.W.1), the brother of the victim got information about the incident and came to Rudraprayag from Delhi and submitted written report to the District Magistrate, Rudraprayag, complaining about the attitude of the appellants and others and also the offence committed by them against his sister. The report was received by the District Magistrate on 30-1-2002, whereupon direction was given to the concerned police officers to inquire and proceed with the matter according to law. This is how the F.I.R. got to be registered on 3-2-2002 at 18.35, on the basis of written report dated 30-1-2002.

5- On the case being registered under Sections 344/307 I.P.C., the investigation was taken up by Station Officer R.P. Singh, who went to the village of the incident and found the victim Smt. Budhi Devi lying in the house of the appellants with burn injuries. He called upon the appellants and others to immediately shift her to Government Hospital, Rudraprayag for medical treatment and on return to the Police Station made an entry in the General Diary vide Report No. 22 of 18.35, Ext. Ka.4. The same day at 22.30 by G.D. Report No.25, Ext. Ka.5, it was reported that while Smt. Budhi Devi while being taken to the hospital in a jeep, succumbed to her injuries and her dead body was kept at the P.H.C., Rudraprayag. The case was then converted to under Section 302 I.P.C. Since the information was

received late in the night, the Investigating Officer in the morning of 4.2.2002 reached the P.H.C. Rudraprayag and held inquest on the dead body of Smt. Budhi Devi and prepared inquest report, Ext. Ka.6. The dead body was packed and sealed and sent for post mortem, along with challan report, ext. Ka.8 and other documents. The autopsy was conducted by Dr. N.K. Prasad (P.W.3) at 4:00 P.M. on 4.2.2002 and autopsy report, Ext. Ka.2 was prepared. Medical Officer found following ante-mortem injuries:-

> "Superficial to deep burn over both lower limbs, both upper limbs anterior part of thorax and lower part of abdomen. Percentage of burn over body was 73%."

On internal examination sign of peritonitis was present in the peritoneum and abdominal cavity was filled with turbid watery fluid. Both the lungs were found shrunken. In the opinion of the medical officer the death was caused due to shock as a result of ante-mortem burn injuries and septicemia about eighteen hours before the post mortem examination.

6- On receipt of the post mortem examination report and on completion of the other formalities of the investigation, charge sheet, ext. Ka.16 was submitted against both the appellants on 19-3-2002 and thereafter they were committed to sessions to face the trial for offences under Sections 302/344 I.P.C.

7- The appellants pleaded not guilty and contended that they have been falsely implicated due to enmity. The defence taken was that the victim accidentally caught fire and sustained burn injuries where after she was being given homely treatment with the aid of herbs and due to poverty she was not taken elsewhere for medical treatment.

8- During the trial prosecution, in order to bring home guilt to the appellants, examined four witnesses. P.W. 1, Gaurav Singh is the informant-brother of the deceased. He narrated the version as made in his written report, Ext. Ka.1, submitted to the District Magistrate and on its basis whereof F.I.R Ext. Ka.3, was later on registered. P.W.2, Smt. Devki Devi is the mother of the deceased. She was examined to prove that the deceased made oral dying declaration to her when she visited the house of the deceased on getting the information that her daughter had received burn injuries. Victim Smt. Budhi Devi was

alleged to have told her that appellant Bhagwan Singh poured kerosene oil on her person and whereas her husband appellant Deepak Singh set her to fire by lighting a match stick. P.W. 3, Dr. N.K. Prasad performed the post mortem on the dead body as stated in the earlier part of the judgment. P.W.4, Rishi Pal Singh was the Investigating Officer of the case. He gave statement to prove the steps taken in the investigation of the offence and relevant documents referred above.

9- In defence appellants examined Smt. Sudha Devi (D.W.1), the real sister of the deceased and who also reside in her marital home in the same village Mathaya Gaon Bhardar and at a distance of about 10-20 paces from the martial house of the deceased. She gave out that her sister Smt. Budhi Devi got accidentally burnt while sitting near the burning fire to warm herself and to ward-off cold. When Smt. Budhi Devi received burn injuries, she was according to the witness give homely treatment with the aid of herbs by the appellants and other family members. Smt. Budhi Devi herself did not prefer to go to hospital to get the treatment on the pretext of her family's poverty. Witness Smt. Barfi Devi (D.w.2), Pradhan of Gram Sabha Mathaya Gaon and Dilbar Singh (D.W.3) a teacher of the said village were examined to prove that Smt. Budhi Devi even made dying declaration on 3-2-2002 wherein she denied any foul play in her sustaining the burn injuries and reiterated that she was burnt accidentally while she was warming herself before the burning fire in the house and to prove the copy of the written dying declaration, Ext. Kha. 1. According to these witnesses three copies of this document were prepared and were signed by the witnesses and Smt. Budhi Devi appended her thumb impression as is the case with the copy, Ext.Kha.1.

10- There was no direct evidence in the case and the case of the prosecution was based on circumstantial evidence. The learned Sessions Judge on the basis of his appreciation of the facts and circumstances and the material on record found that the circumstances as emerged in the case make out a complete chain, which lead to irresistible conclusion that Smt. Budhi Devi died on account of burn injuries suffered by her at the hands of the appellants who poured kerosene oil on her person and set her ablaze and thereafter did not take her to the hospital to provide her medical treatment. The defence

version was held to be false and fabricated. The learned Sessions Judge thus held the appellants guilty of the offence punishable under Section 302 I.P.C. and convicted and sentenced the appellants as stated above.

11- We have heard the learned counsel for the appellants and the learned A.G.A. at length and have carefully considered the evidence on record and have also gone through the judgment under appeal.

12- At the outset it need to be stated that according to the learned Sessions Judge the following circumstances, which formed complete chain to prove the guilt of the appellants, were emerged from the evidence on record:-

(1)- There was motive to commit the offence in view of the victim being instrumental in giving currency to the rumor that her brother-in-law (Jeth) appellant Bhagwan Singh developed illicit relations with her as a result of which she became pregnant and gave birth to a child, thereby bringing dis-repute to the family of the appellant.

(2) Oral dying-declaration was made by Smt. Budhi Devi to her mother Smt. Devki Devi (P.W. 2) and which was true and acceptable.

(3) The conduct of the appellants in not taking the victim to the hospital to provide medical treatment was indicative of the fact that the appellants wanted to remove the victim from the scene.

(4) The incident of fire and receiving the burn injuries having taken place on 18-12-2001, the appellant did not inform the matter to the village Patwari.

(5) Investigating Officer Rishi Pal Singh (P.W.4) did not find any sign of accidental fire in the room (Gaushala) where the incident is said to have taken place.

(6) The appellants did not disclose any reason for the accidental fire when the factum of death of the victim was reported at the police station on 3-2-2002 vide G.D. Report, Ext. Ka.5.

(7) The victim having receiving burn injuries in the house of the appellants there was nothing to indicate that the appellants made any attempt to save the victim and tried to extinguish the fire.

13- Referring to the circumstances highlighted by the learned Sessions Judge, learned counsel for the appellants submitted that the learned Sessions Judge failed to consider the evidence in proper perspective in as much as the complainant Gaurav Singh (P.W.1) himself has not visited the house of the appellants to know the correct facts before submitting the written report, Ext. Ka.1, to the District Magistrate and merely went out to make allegations against the appellants on the mere saying of one Trilok Singh, who was not examined in the evidence by the prosecution. Not only this, the complainant has not even visited the house of the appellants to see his sister Smt. Budhi Devi lying there with burn injuries even after coming to his village on being informed the alleged incident by his said acquaintance and merely put forward and explanation that there was danger to his life in case he was to visit the house of the appellants. He gave out that his sister gave birth to a child on 18th December, 2001 and thereafter his sister was set to fire by the appellants who were displeased with his sister on account of their disrepute as a result of illicit relations of one of the appellant Bhagwan Singh which his sister. He also gave out that next day of the incident his uncle Chachar Singh, his mother Devki Devi and other relatives have gone to the house of his sister Smt. Budhi Devi to inquire about the incident. It is thus obvious that the informant himself has no personal knowledge of any incident and his claim that he himself has no visited the house of his sister on account of danger to his life does not appear truthful. The reason being that when his uncle, mother and other relatives have been visiting the house of the appellants to see the victim, there could not have been any danger for the informant also and it appear that the F.I.R. was merely submitted on the basis of information received from an outsider, who has even not come in the court to deposed anything about the incident in any way involving the appellants.

14. Learned counsel then drew attention to the evidence of Smt. Devki Devi (P.W. 2), the mother of the victim who on receiving the information that her daughter Smt. Budhi Devi had received burn injuries visited her thrice and found that her daughter was being kept in the room (Gaushala) where the appellants and other family

members were also present and that on the burn injuries of her daughter paste of root of ‘cheer’ tree was applied by way of treatment. According to her on one of the occasion the victim Smt. Budhi Devi told her that appellant Bhagwan Singh poured kerosene oil on her person and the appellant Deepak Singh set her to fire by lighting a match stick. She had not reported the matter thereafter to the Patwari or any other family member and continued to visit her daughter at the house of the appellants. She also admitted that her daughter had given birth to a child who had expired. She also claimed that her daughter told her that the child born was of appellant Bhagwan Singh and not of the husband appellant Deepak Singh. The witness further stated that her daughter has not asked her to take her to hospital to provide medical treatment. She herself did not take her daughter to the hospital due to poverty and similar was the case with the appellants. The witness further admitted that it is customary in the village that the first floor room of the house is used for living purposes whereas the room on the ground floor is used to keep the cattle. As and when a lady give birth to a child she is kept in the ground floor room after removing the cattle from there and the lady is kept all alone there in the room for quite some time. The lady who give birth to a child is provided a bed which consist of day leaves of oak and ‘burass’ trees and to keep the same warm burning oven is kept there. She was suggested that her daughter accidentally caught fire while she was warming herself against the burning oven/fire while lying in the room all alone after giving birth to the child. The witness denied the suggestion.

15- Learned counsel for the appellants submitted that although the witness denied to the suggestion but her evidence prove that there is a custom in the village in the hills to keep the lady giving birth to a child in the ground floor room which is usually used for keeping the cattle and that the victim having given birth to a child in the winter month of January, she was in all probability have to warm herself to avoid the cold and white lying in front of the burning fire of the oven she accidentally caught fire and sustained burn injuries. Learned counsel also drew attention to the evidence of this witness who had visited the victim thrice and since she knew it very well that her

daughter caught fire accidentally she did not report the matter to the Patwari and this was also the reason that as and when she visited there the appellants and other family members were found there in the house and the victim was provided homely treatment with the aid of paste of herbs. In a situation like this it can not be safely accepted that the victim could have told her that she was set ablaze after kerosene oil was poured on her person.

16- Attention was also drawn to the medical evidence to bring the point of view that the burn injuries were not received on the face or on the head and this belies the claim that she was sent to fire after kerosene oil was poured on her person. Absence of any injury on these parts of the body indicate that the victim suffered burn injuries accidentally and this was the reason that her mother and other relatives despite visiting her repeatedly, did not report the matter to the police, Patwari or any other person alleging any intention on the part of the appellants to eliminate the victim Smt. Budhi Devi in order to save their reputation.

17- Another important aspect of the matter which is borne out of the evidence in the case is that the probability appear well founded in view of the evidence of the victim's real sister Smt. Sudha Devi (D.W.1) examined in defence. This witness was also married in the same village Mathaya Gaon and her marital home is just about 10-20 paces from the house of appellants. When Smt. Budhi Devi received burn injuries she visited her and was told by the victim that she caught fire accidentally from the flames while she was warming herself. She also told the witness that the appellants and other family members gave her homely treatment and paste of herbs was applied to the burn injuries. The victim even told her sister that she do not want to go to hospital because of family's poverty. The witness was cross-examined at length on behalf of the prosecution but nothing of vital importance, so as to assail her testimony, could be brought on record and in the totality of the circumstances of the case, we do not see any reason to doubt her veracity. Her evidence in turn also belie the claim made by her mother Smt. Devki Devi in regard to the alleged oral dying declaration of the victim. The fact that the mother had visited three times the house of the appellants to see her daughter and did not

report the matter to the village patwari coupled with the definite and reliable evidence of defence witness lead to the inference that Smt. Budhi Devi caught fire accidentally and she herself opted not to go to hospital and preferred to receive the homely treatment as was provided by the appellants and other family members.

18- As regards the evidence of D.W.2 and D.W.3 is concerned, the learned Sessions Judge rejected their testimony on the ground that they in concert with the appellants fabricated the dying declaration of Smt. Budhi Devi in order to create a defence when the matter was reported to the police. We fail to find ourselves in agreement with the view of the learned Sessions Judge for the reason that from the evidence on record discussed earlier it appear to be a case of accidental fire in which Smt. Budhi Devi sustained burn injuries and we do not find anything inconsistence in the claim made by Smt. Barfi Devi (D.W.2) and Dilbar Singh (D.W.3) both of whom have stated in one voice that Smt. Budhi Devi told them in the presence of other witnesses that she herself caught fire accidentally and none was any way involved in her getting burnt at her marital house. D.W.2 is the Pradhan of village Gram Sabha whereas D.W.3 is a Primary School teacher of the village and there is nothing in their cross-examination as may indicate that they were made to deposed falsely at the instance of the appellants. The dying declaration made by Smt. Budhi Devi was reduced by D.W.2 in writing and three copies were prepared by the same process by use of the carbon, one of which is Ext. Kha.1 on the record. No doubt the written dying declaration was prepared on 3.2.2002 when the F.I.R. came into existence but this factor cannot be taken to suspect the veracity of the evidence of these witnesses who have otherwise stood the test of cross-examination to sustain their reliability. After the victim received accidental burn injuries she was being treated at the home by herbs by the appellants and the other family members and when they came to know that the F.I.R. had been lodged against them they could have very reasonably thought of telling the village Pradhan that whatever has been said by the victim of the case may be reduced in writing so that they may not be unnecessary put to trouble for having not committed any offence alleged against them.

19- Learned A.G.A. in this connection referred to the evidence of Investigating Officer Rishi Pal Singh (P.W.4) who had visited the village of the incident on 3.2.2002 in connection with the investigation of the crime and claimed to have found the victim Smt. Budhi Devi not physically fit and capable of giving any statement. Although such a claim was made by the Investigating Officer but it is also of significance that the cross-examination he stated that he reached the house of the appellants at 12.30 P.M. on 3.2.2002 and at that time Smt. Budhi Devi was speaking in Garhwali dialect and her spoken words were not clear and audible. According to him he was not able to understand as to what was spoken by the victim but he claimed that one of the female constable who knew Garhwali dialect was with him at that time. When the Investigating Officer admit that the victim was then in a position to speak in Garhwali it is difficult to believe that she was not able to give any statement to him. It is of significance that the female constable who knew Garhwali dialect was not examined to state that what the victim was telling or speaking in Garhwali dialect was not understandable and therefore in a situation like this we can safely prefer to place reliance on the evidence of D.W.2 and D.W.3 that the victim in fact even spoke to them on that day, that is, on 3.2.2002, that she was not set to fire by anybody but she caught fire accidentally while warming herself before the fire in her marital home. In our view the evidence of these witnesses also lend credence to the strong probability and inference deducible from the evidence of the mother and sister of the deceased and as referred above. In other words the circumstances of the case do not indicate that the appellants poured kerosene oil on the person of the victim and set her ablaze and thereafter detained her in the house with intent that she may ultimately succumb to her injuries.

20- On analysis of the evidence on record it therefore can safely be said that the appellants have had no motive to commit the murder of the victim Smt. Budhi Devi as she had already given birth to a child and every body knew that the child was not begotten by her husband appellant Deepak Singh but from her brother-in-law (Jeth) Bhagwan

Singh and after the birth of the child the reputation of the family could not have been revived or regained on elimination of the victim from the scene. Therefore, the learned Sessions Judge in our view wrongly held that there was motive for the appellants to commit the offence.

21- The oral dying declaration alleged to have been made by the victim to her mother P.W. 2 Smt. Devki Devi does not stand proved as true from the statement of the said witness and the second circumstance was also wrongly held to be established against the appellants. So far as the conduct of the appellants was concerned there being no hospital in the village Mathaya Gaon they preferred to provide homely treatment by the aid of herbs and that too in the knowledge of the mother and sister of the victim. Not only this the victim herself did not want to go elsewhere to receive medical aid. If in a situation like this and also on account of poverty the appellants preferred to provide homely treatment, the conduct of the appellants would not be taken to show that they were involved in the commission of any offence and wanted the victim to succumb to her burn injuries even if they were sustained accidentally. This way the third circumstance referred above also does not stand proved satisfactorily from the material on record.

22- No doubt the appellants did not bring the incident to the notice of the village Pradhan or Patwari but having found that it was known to every body in the village including the close relatives of the victim, the conduct of the appellants could not be taken to conclude that they wanted to tried to conceal the commission of any crime. Therefore, the conduct of the appellants could not have been taken to make out a link in the chain of the circumstances leading to the guilt of the appellants.

23- The victim caught fire accidentally on 18-12-2001 while warming herself before the burning oven/fire, the Investigating Officer was not supposed to have collected any evidence of accidental fire from the room (Gaushala) when he visited there on 3.2.2002 and therefore this was also not a circumstance to show that the defence claim was false and fabricated. This also do not make out a strong circumstance against the appellants. Smt. Budhi Devi succumbed to her burn injuries while she was being taken to the hospital on 3.2.2002

and the information was carried to the police station the same day vide G.D. Report, Ext. Ka.5. In that information it was not disclosed that the victim had received burn injuries by accident and this was also taken another circumstance against the appellants but we are convinced that there was no point in disclosing in that information that the victim had died as a result of the accidental fire at the house of the appellants.

24- The last circumstance said to have been established relate to the medical evidence. No doubt the Medical Officer Dr. N.K. Prasad (P.W.3) opined that crust could even be formed on burn injury without treatment but this aspect of the matter could not have been taken to infer that the appellants in fact did not provide any treatment to the victim and let her to develop secondary infection leading to septicemia ultimately resulting in her death. It has come in the evidence of the mother and the sister of the victim that homely treatment by the aid of herbs was provided to the victim by the appellants who appear to have been convinced that the burn injuries would be successfully treated as such and if they did not prefer to take her to the hospital for better treatment it would not mean that they deliberately intended that she may develop further complication and ultimately succumb to the burn injuries. Therefore, this circumstance also does not satisfactorily stand established against the appellants and there being no complete chain of circumstances leading to the only inference that none other than the appellants have been instrumental to the cause of death of the victim Smt. Budhi Devi, the appellants could not have been held guilty of the commission of the crime under Section 302 I.P.C. In our view the appellants were wrongly held guilty and convicted under Section 302 I.P.C. by the learned Sessions Judge. The conviction and sentence awarded against the appellants therefore can not be legally sustained.

25- For the reasons aforesaid, this appeal succeeds and is hereby allowed. The judgment and the order of conviction and sentence dated 17-6-2002 under Section 302 I.P.C. against the appellants is set aside. The appellants are not held guilty and acquitted of the charge under

Section 302 I.P.C. The appellants shall be released forth with, if not wanted in any other case.

26- Let the record be sent back to the Court concerned for compliance, to be reported within one month.

(Rajesh Tandon, J.) **(Irshad Hussain, J.)**

ISB